No. 80-1349

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ALEXANDER L. STEVAS
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

STATE OF WASHINGTON,

PETITIONER,

v.

NEIL MARTIN CHRISMAN,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF WASHINGTON

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED FEB. 10, 1981
CERTIORARI GRANTED JUNE 22, 1981

TABLE OF PARTS OF THE RECORD

	Page
Chronological List of Relevant Docket Entries	1-6
Portions of Verbatim Report of Proceedings dated March 24 and 29, 1978	6-33
Trial Court's Findings of Fact and Conclusions of Law (as to Motion to Suppress Evidence) Filed April 17, 1978	33-45
Trial Court's Memorandum Opinion, Filed April 17, 1978	45-52
Portions of Petitioner's (State's) Washington State Court of Appeals Brief (a portion of Page 18, Page 19 and a portion of Page 20), Filed December 22, 1978	53-57
A Portion of Petitioner's (State's) Answer to Motion for Discretionary Review (selected portion from page 4), Filed January 10, 1980	57-58

The following opinions, decisions, judgments and orders have been omitted in printing this appendix because they appear as appendices starting on the following pages of the Petition for Certiorari:

Opinion of the Washington State Court of Appeals, filed on October 4, 1979, 20

Opinion of the Washington State Supreme Court, filed November 26, 1980 33

Mandate, Supreme Court of the State of Washington (includes Order Denying Motion for Reconsideration), filed January 8, 1981 44

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

February 6, 1978 - Information for Possession with Intent to Deliver a Schedule I Controlled Substance (Marijuana) and Possession of a Schedule I Controlled Substance (Lysergic Acid Diethylamide), filed in the Superior Court for the State of Washington, in and for Whitman County, Colfax, Washington.

March 20, 1978 - Plaintiff's (State's) Memorandum of Authorities Regarding Suppression Hearing, filed in the Superior Court of the State of Washington, in and for Whitman County, Colfax, Washington.

March 23, 1978 - Defendant's Motion to Suppress Evidence, filed in the Superior Court for the State of Washington, in and for Whitman County, Colfax, Washington.

March 23, 1978 - Defendant filed Suppression Hearing Brief in the Superior

Court for the State of Washington, in and for Whitman County, Colfax, Washington.

March 24 and 29, 1978 - Testimony and Argument on Motion to Suppress before the Whitman County Superior Court.

April 11, 1978 - Amended Information for Possession of More Than 40 Grams of the Schedule I Controlled Substance (Marijuana) and Possession of Schedule I Controlled Substance (Lysergic Acid Diethylamide) filed in the Superior Court of the State of Washington, in and for Whitman County, Colfax, Washington.

April 17, 1978 - Memorandum Opinion of the Superior Court of the State of Washington, in and for Whitman County, Colfax, Washington, filed by the court.

April 17, 1978 - Findings of Fact and Conclusions of Law (as to suppression motion), filed in the Superior Court of the State of Washington, in and for Whitman

County, Colfax, Washington.

May 22, 1978 - Defendant's Supplemental Memorandum in Support of Defendant Chrisman's Motion to Suppress, filed in the Superior Court of the State of Washington, in and for Whitman County, Colfax, Washington.

May 22, 1978 - Defendant filed Motion to Suppress in the Superior Court of the State of Washington, in and for Whitman County, Colfax, Washington.

May 22, 1978 - Defendant filed a Waiver of Right to a Jury Trial in the Superior Court of the State of Washington, in and for Whitman County, Colfax, Washington 99111

May 22, 1978 - Defendant was tried before the court and found guilty.

July 21, 1978 - Defendant was sentenced and an Order Granting Probation entered on his conviction for Possession of More Than 40 Grams of Marijuana and Possession of LSD, Count I and Count II of the Amended Information, in the Superior Court of the State of

Washington, in and for Whitman County, Colfax, Washington.

July 24, 1978 - Defendant filed a Notice of Appeal to the Court of Appeals in the Superior Court of the State of Washington, in and for Whitman County, Colfax, Washington.

November 6, 1978 - A Narrative Supplement to the Verbatim Record of Proceedings was filed in the Superior Court of the State of Washington, in and for Whitman County, Colfax, Washington.

October 4, 1979 - Washington State Court of Appeals, Division III, Spokane, Washington filed its Opinion.

October 24, 1979 - Defendant filed a Motion for Reconsideration in the Washington State Court of Appeals, Division III, Spokane, Washington.

December 4, 1979 - Order on Motion - Denying Motion for Reconsideration was

filed in Washington State Court of Appeals, Division III, Spokane, Washington.

December 31, 1979 - Defendant filed a Petition for Review in the Washington State Court of Appeals, Division III, Spokane, Washington.

January 21, 1980 - Plaintiff (the State) filed an Answer to Motion for Discretionary Review which was filed in the Court of Appeals on January 10, 1980.

November 26, 1980 - The Supreme Court of the State of Washington, Olympia, Washington, filed its opinion reversing the Court of Appeals - En Banc.

December 10, 1980 - Plaintiff (the State) filed a Motion for Reconsideration in the Washington State Supreme Court, Olympia, Washington.

December 31, 1980 - The Washington State Supreme Court filed an Order Denying Motion for Reconsideration.

January 8, 1981 - The Supreme Court of the State of Washington filed its Mandate Denying Plaintiff's (the State's) Motion for Reconsideration and Affirming its Order Denying Motion for Reconsideration entered December 31, 1980.

PORTIONS OF VERBATIM REPORT OF PROCEEDINGS
Dated March 24 and 29, 1978

(all portions concern examination of Officer Daugherty with the exception of pages 95 and 96 which are portions of the oral opinion of the trial court judge.)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR WHITMAN COUNTY

STATE OF WASHINGTON,

Plaintiff,

v. No. C-1799

NEIL MARTIN CHRISMAN
and CARL PHILIP OVERDAHL

Defendants.

VERBATIM REPORT OF PROCEEDINGS

* * * * * * *

[P.4 - Direct Examination]

* * * * * * *

Q. Why did you ask him [Overdahl] to come over to where you were?

A. Well, the presence of the alcohol, and the individual did not appear to be of legal age.

Q. Are there any rules and regulations with the university regarding the possession of alcohol on university premises?

A. The WAC rule covers that there is not supposed to be any alcoholic beverages within the university property. There is also a state law for the open container.

Q. Did, what happened after you stopped him?

A. I then asked the individual if he had

any identification, and he stated he did not.

* * * * * * *

[P.5 - Direct Examination]

* * * * * * *

Q. All right. You stopped him? [Overdahl] Okay. What happened next?

A. I then asked the subject for his identification. He stated that he did not have any. He then asked me to hold the bottle while he returned to his dorm room to obtain the proper identification. I stated at that time it was not our policy to subsequently let an individual leave from an area at that particular point without, it just was not the way that we handled the situation.

Q. Well, I mean, despite what you said in your own words what did you, what meaning did you convey to him regarding his ability to go up to the room to get

some identification?

[P.6 - Direct Examination]

A. I stated to him that he could not go alone because we just don't release people from custody.

Q. All right. At that point what did you think you had in terms of violation of the law?

A. I believed that I had a minor in possession.

Q. All right. What did he say when you told him that he wasn't free to go back up to his room and get his identification?

A. I stated that he could not go back to his room, and that we could both go up which he stated to me okay. We then entered back into Orton Hall and just prior to getting on the elevator I asked the subject how old he was. He stated to me at that time he was 19.

Q. Now, if this person had been over the age of 21, and had come out of the dormitory with that alcohol, would you have stopped him?

A. Yes.

Q. Why is that?

A. Because of the ruling stating, the WAC rules for the alcohol in a university building, and for the fact that it was an open container.

Q. Why do you, why do you seek identification under those circumstances? Say he was over 21?

A. I have no way of being sure that he was over 21 until I have proper identification.

Q. What would you have done with him if he was over 21? What would you have done with him then?

A. Pardon me?

Q. What would you done with the matter if it had turned out he was over 21?

A. I would have probably confiscated the alcohol and turned,

[P.7 - Direct Examination]

written a report for the violation of WAC rules, and submitted it to Student Affairs.

Q. Okay. In any event, you would have needed his identification? Is that correct?

A. Yes.

* * * * * * *

A. As I, we approached the room I observed the door to be open approximately 3 to 4 inches. As we got to the room Mr. Overdahl pushed the door open and entered the room. I stood in the doorway without entering, actually physically entering the room.

[P.8 - Direct Examination]

* * * * * * *

Q. How wide was the door open when Mr. Overdahl first came to the door?

A. Approximately 3 or 4 inches.

Q. Okay. Did you ever tell Mr. Overdahl that he was under arrest?

A. Not physically. I did not state that he was under arrest, however, I did have him in physical custody.

Q. Well, I mean, suppose he'd wanted to leave? What would you have told him?

A. I wouldn't have let him leave.

* * * * * * *

Q. Draw in where the door was when it was opened?

A. When he opened it?

Q. Yes?

A. (Witness does this). Okay. The door was opened to, almost to its full extent, approximately like that.

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[P.12 - Direct Examination]

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Q. What happened when he saw you?

A. He appeared to me just from observing him the brief amount of time that I had seen him before he noticed me, at that point he appeared to be, become rather nervous at my presence, the "uniformed presence of a police officer."

Q. What, I mean, how could you tell?

A. He took, he looked over towards my direction and then he looked away, and then he just kind of real quick glanced back, and then he just kind of kept watching as to what actions I was taking.

Q. Well, how did this differ from his actions prior to the time he had seen you?

A. He appeared nonchalant when I saw him. He was just, you know, walking across the room.

* * * * * * *

[P.17 - Direct Examination]

* * * * * * *

Q. Okay. Now, what kind of seeds are these, by the way?

A. Marijuana seeds.

MR. PATRICK: I object to that, Your Honor.

Q. Well, what kind of seeds do you believe these to be?

A. I believe those to be marijuana seeds.

Q. Is that fair?

MR. PATRICK: All right.

Q. Now, somebody is going to ask you undoubtedly why this isn't bird seed or broccoli seeds, or mustard seeds or something like that, what is it about marijuana seeds that you knew at the time that caused you to at least think they were marijuana seeds?

A. It would be the size, the shape of the seeds, which is an oval type, flatter

than they are long or round, the color is anywheres from a light green to a medium brown. The number of seeds together in one location.

Q. What's, what's significant about the number of seeds in one

[P.18 - Direct Examination]

location?

A. Within a university environment where there are in essence no customers, or that type of situation allowed, that amount of seeds together usually establishes that they are in essence users of a controlled substance or to-wit, possibly marijuana.

Q. Fine. Let me ask you just for my own reference, were there any plants in the room?

A. Any plants?

Q. Growing plants?

A. No, sir.

Q. Were there any animals like birds?

A. No, sir.

Q. Was there anything else in there that might account for the presence of seeds? Either growing a garden? Or making broccoli or doing something like that?

A. No, sir.

* * * * * * *

Q. Okay. What did you do after you saw the seeds and the pipe?

A. After I saw the, excuse me, after I saw the seeds and the pipe I looked again back at the seeds, from after I had observed the pipe, I then due to Mr. Chrisman's nervousness, I then entered the room-

[P.19 - Direct Examination]

* * * * * * *

Q. What did you do next?

A. I then entered the room, walked directly to the seeds, I looked at them. I

walked past them. I walked over to the desk and picked up the pipe, smelled the contents of the pipe, which was

[P.20 - Direct Examination]

similar to that of marijuana that I had been in contact with in the past. I then turned and stated to the individuals that before we proceeded any farther that I must advise them of their rights.

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[P.21 - Direct Examination]

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Q. How far were you into the room when you saw Chrisman the first time?

A. I was not in the room. I was in the doorway.

Q. Well, you were in the, right there in the doorway?

A. I was enough to lean my shoulder against the doorjamb itself.

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[P.28 - Direct Examination]

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Q. Okay. What did you say about how long, for instance, it would take to get a search warrant?

A. We stated that it would probably take in the area of an additional two hours to obtain a search warrant.

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[P.35 - Cross Examination]

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Q. Okay. When you met Mr. Overdahl why did you want to see his identification?

A. Because I believed him to be under the legal age to possess alcohol.

Q. I see.

A. Also, for the purposes of-

Q. You wanted to use his identification to establish his age?

A. Yes.

Q. You needed a birth date to establish the age?

A. Also, we use that to, any individuals that we contact we, in order to be responsible for our time they ask us to identify all individuals that we contact.

Q. Okay. If Mr. Overdahl hadn't stated his age, and you hadn't gotten his age, didn't know his age, would you have expected that in the Pullman District Court that he would be convicted of being a minor in possession, without any evidence of his age?

A. I wouldn't have released him until I had proper proof of his age.

Q. That wasn't my question? If you took you case to Pullman District Court and introduced the gin and told the Judge that

[P.36 - Cross Examination]

Mr. Overdahl had the gin, and you didn't know how old he was, but here he is, would you have expected that Judge to have convicted him of being a minor in possession?

A. Not without proof of proper, proper proof of age.

Q. Okay. So, is it fair to say that until you knew his age you didn't have probable cause to place him under arrest? For being a minor in possession?

A. Until I obtained the, until he stated to me that he was under age.

Q. I see. But, you wouldn't have let him go?

A. Not without proper proof of age.

* * * * * * *

[P.37 - Cross Examination]

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Q. Okay. I take it then that in the hallway, or in the lounge, you had not

advised him of his rights?

A. No, sir.

Q. But, you would have not let him out of your sight? In your judgment he was not free to come and go as he chose, correct?

A. Yes.

* * * * * * *

Q. Okay. Now, when Mr. Overdahl told you that he was 19, you wanted, you still wanted identification, is that what it is? You still asked him for ID?

A. Yes.

Q. Okay. What do you need the ID for?

A. It'd be proof of the age of date of birth, the date of birth, also the correct name of the individual.

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[P.41 - Cross Examination]

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Q. . . . What was Mr. Overdahl doing during this time?

A. He was attempting to obtain what I believe to be his identification.

Q. Here?

A. Where?

Q. (Indicating).

A. Right there. Well, he had his back to me facing towards the bed stand.

Q. Was there, was there a billfold there? Or something?

A. I could not observe what was in front of him.

Q. Was he fumbling with things in front of him? Or can you describe what he was doing?

A. He was attempting to obtain it from some location. I couldn't see the location.

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[P.42 - Cross Examination]

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Q. At that time you were satisfied, perfectly satisfied that those were the only two people in the room?

A. Yes.

Q. Okay. By the way, did you have a walkie-talkie with you?

A. Yes.

[P.43 - Cross Examination]

Q. And, does that put you in comm-, that obviously puts you in communication with the police department and that's how you called for Officer Kenny?

A. It also puts us in communication with each individual officer.

* * * * * * *

Q. Was the only reason that you went into the room at that time was to look at the seeds and the pipe? That you had seen?

A. Well, I believed that there was a controlled substance. I went in to observe it.

Q. Okay. Go ahead, you went in to observe it?

A. (Nodding in the affirmative).

Q. You went in specifically to look at the seeds and the pipe thinking they were a controlled substance?

A. Yes.

Q. Is that correct?

A. (Nodding in the affirmative).

Q. In fact, is it, would it be accurate to say that you wanted to, you felt that you had reasonable and probable cause to enter the room and examine the articles more closely?

[P.44 - Cross Examination]

A. I believe at that time I did, yes.

Q. Why did you want to examine the articles more closely?

A. Are you asking why? Why did I want to examine them more closely.

Q. Yes?

A. Well, I believed that that's what they were. I went, entered in to affirm my beliefs and to seize the articles, if

they were.

Q. If they were?

A. Right. What I believed to be.

Q. Okay. So, you went in to inspect the seeds and the pipe, for further inspection and for no other purpose?

A. At that point?

Q. There was no other purpose?

A. No, sir.

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[P.51 - Cross Examination]

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Q. Well, these seeds, how did these differ from beet seeds?

A. Pardon me?

Q. How do these differ from beet seeds?

A. I'm not familiar with beet seeds.

Q. Onion seeds?

A. I'm not familiar with onion seeds.

Q. Any other seeds? So, any seed you'd see is, ergo a marijuana seed?

A. Yes.

Q. It wasn't supposed to sound that way.

MR. PATRICK: I thought it sounded all right.

Q. Yet you saw those seeds and identified them as marijuana seeds from a distance of about from where you are to here?

A. Not quite that distance.

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[P.52 - Cross Examination]

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Q. Is it unusual to see seashells in dorm rooms?

A. I haven't gone into that many dorm rooms to really notice it, how many people have seashells or not.

Q. So, you didn't know when you saw that, that seashell whether it was unusual or not to see it there?

A. Well, the particular seashell in question, the open part of the sea-

shell was facing towards the door, or facing towards me,

[P.53 - Cross Examination]

which would have been the doorway, I observed that the end of it was blackened.

Q. Are you familiar with that type of seashell?

A. I've seen them before.

Q. Huh?

A. I have seen them before.

Q. That type, that particular type?

A. Ones, if not that particular one, similar to it.

Q. What, what is the inside of them normally like? Are they blackened?

A. They're usually either a lighter or approximately the same color as the outside.

Q. And, you recognized it immediately as something that could likely be used for contraband? Or in conjunction with

controlled substances?

A. What I believe, yes.

* * * * * * *

Q. Okay. I guess I misunderstood then. How long did you wait at the doorway then before you entered?

A. I would say it would be between 30 and 45 seconds.

Q. Almost a minute? You stood there?

A. I believe so, yes.

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[P.56 - Redirect]

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A. The department attempts to maintain a low profile as far as the actual, I wouldn't know how to exactly put it into words as far as the Adam 12 type arrest. We attempt to be a little more the low profile so we don't injure the atmosphere of the university per se.

Q. In other words, you're catching a lot of flak from the students aren't you?

A. More than our share.

Q. Nevertheless, Officer Daugherty, what do you do short of coming up with a guy and slapping the cuffs on him and telling him he's under arrest for minor in possession? What do you do to assert your authority over him?

A. It depends upon the situation. If there's a large amount of people around I attempt to get the individual off by himself. If there is not, then I direct my attention to the subject at that time.

Q. Okay. Now, and did you or did you not communicate to Mr. Overdahl at the time of the initial stop that he was not free to leave?

A. He asked me if he could, if I would hold the bottle while he went to his room, and I stated that we do not let the people go at that time, that, or I would not release him until he had

[P.57 - Redirect]

proved his age.

Q. At that point did you believe that you had probable cause to believe that he was under the age of 21, in possession of alcohol?

A. I did.

Q. Fine. That's all I have.

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[P.58 - Recross Examination]

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Q. When you saw that seed you didn't know but what they might have been agricultural majors?

A. No, sir.

Q. And, you've already established that you really wouldn't know marijuana from onion seed or beet seeds?

A. I, he asked me if I knew what an onion seed looked like. I didn't say that I could differentiate between the two.

Q. You would not be able to, you couldn't tell the difference?

A. It would depend upon whether or not I could see the two side by side. I don't, off the top of my head I do not know what an onion seed looks like, no, sir.

Q. Okay. You earlier, then you also in response to Mr. Bishop's question said that he asked you, according to my notes, if it was unusual to see sea-shells in dormitory rooms, and I think that you responded that you hadn't been in that many dormitory rooms, is that correct?

A. We don't, they're private dwellings, I don't have that much call to go into them except for investigation of cases.

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[P.95 - Trial Court's Oral Opinion]

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. . . The officer saw easily what he thought was contraband. Now, he might have been mistaken. If he had been, any charges that were filed would be dismissed. That isn't what we're dealing with. We're not talking about the guilt or innocence of the accused. We're talking about simply did the officer have enough reason to feel that he was looking at contraband. I looked at those seeds when they were displayed here the other day. They really don't look like the seeds of any common commodity that I've seen. I'm satisfied that somebody who's seen them once would at least recognize that he was looking at something

[P.96 - Trial Court's Oral Opinion]

rather similar if he saw them again. They were in open view. There wasn't any illegal search of any kind. The circumstances were such that the two defendants would

have been aware that he might have seen those seeds. Testimony makes it clear that one of the defendants was very uneasy by his presence. Had he simply turned around and left with the defendant, all of that contraband would have been gone about 10 seconds later, probably, and the officer knew that. That is a circumstance that could be, without a doubt, classified as exigent circumstances. He couldn't plausibly have expected to obtain a search warrant under those circumstances and find anything. I don't feel that the observation of the seeds is illegal nor the entry into the room to take a better look was illegal under those circumstances.

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TRIAL COURT'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW
Filed April 17, 1978

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR WHITMAN COUNTY

STATE OF WASHINGTON,
Plaintiff,

v. No. C-1799

NEIL MARTIN CHRISMAN
and CARL PHILIP OVERDAHL,
Defendants.

FINDINGS OF FACT

1. On the 21st day of January, 1978, at approximately 8:55 p.m., Officer Richard Daugherty of the Washington State University Police Department was walking toward Orton Hall, a Washington State University dormitory. As he approached the front door to Orton Hall, Officer Daugherty observed the defendant, CARL PHILIP OVERDAHL, exit Orton Hall with a number of his friends. Mr. Overdahl was carrying a half gallon of gin. Mr. Overdahl appeared to Officer Daugherty to be

under the age of 21 years.

2. Believing that the defendant, CARL PHILIP OVERDAHL, was not of legal age, Officer Daugherty stopped him and asked him for his identification. Mr. Overdahl stated that he did not have any identification on his person, but that he did have identification upstairs in his room. Mr. Overdahl then asked Officer Daugherty if Officer Daugherty would wait downstairs while he ran up to his room and procured the identification. Officer Daugherty told Mr. Overdahl that under the circumstances that this would not be possible and that Officer Daugherty would have to accompany Mr. Overdahl to his room. To this Mr. Overdahl stated "OK". This conversation was observed by at least one other person, Lisa Anthony, who believed, based upon her observation of the situation that Mr. Overdahl was being detained by Officer Daugherty and

that Mr. Overdahl was not free to leave.

3. Officer Daugherty did not intend to let Mr. Overdahl leave his presence until proper identification had been procured. Once proper identification had been procured and Mr. Overdahl had not demonstrated that he was over 21, had this been a normal arrest for minor in possession, he would have been taken as is the routine procedure, to the Washington State University Police Station, booked, issued a citation and released.

4. Following the initial contact, Officer Daugherty and Mr. Overdahl proceeded to the 11th floor of Orton Hall. On the way, Officer Daugherty asked Mr. Overdahl his age, to which Mr. Overdahl responded that he was 19. Upon arriving at the 11th floor, Officer Daugherty and Mr. Overdahl went down the hallway, Mr. Overdahl leading and Officer Daugherty a step or two

behind. Officer Daugherty observed the door to Mr. Overdahl's room to be open about three or four inches. Mr. Overdahl pushed the door open and entered the room. In order to keep Mr. Overdahl within his view, Officer Daugherty stood in the doorway, directly under the door frame, looking into the room, his left shoulder leaning against the door frame.

5. At this point Officer Daugherty observed a second individual in the room holding a box which he was apparently attempting to place in the medicine cabinet on the south wall. When this second subject, ultimately determined to be defendant, NEIL CHRISMAN, observed Officer Daugherty he immediately became, to Officer Daugherty's observation, very nervous. Mr. Chrisman then removed the box from the medicine cabinet and placed it on a desk on the northeast corner of the room. It was apparent to

Officer Daugherty, from the actions of Mr. Chrisman, that he was very upset and anxious about the presence of Officer Daugherty.

6. Officer Daugherty then observed a black and gold tray containing what appeared to Officer Daugherty to be marijuana seeds. The room itself is approximately 10 feet by 17 feet. The tray that Officer Daugherty observed was approximately 8 to 10 feet away from him on a desk near the center of the north wall. The lighting in the room was such that Officer Daugherty had no difficulty seeing the seeds from that distance. Officer Daugherty then observed a small seashell pipe on the top of the desk in the northeast corner of the room. At that point, reasonably believing what he had seen was contraband, Officer Daugherty walked forward to examine the articles more closely. Upon examination, the pipe had an odor similar to that of marijuana resi-

due and a closer observation of the seeds verified Officer Daugherty's earlier observation that they were, in fact, marijuana.

7. Officer Daugherty's observation of the contraband in the room and Mr. Chrisman's reaction to Officer Daugherty's presence were such that it is reasonably apparent that if Officer Daugherty had left the premises immediately after observing the seeds and pipe and attempted to secure search warrants, the contraband would likely have been removed during the interim.

8. Officer Daugherty, through his formal police training, his on the job experiences, and his background as a student at Washington State University, was familiar with the appearance and characteristics of marijuana seeds. The seeds themselves had that characteristic size and color. Also, the ornamental seashell

pipe was known to Officer Daugherty to be similar to the kinds of paraphernalia used for smoking marijuana.

9. Upon observing the seeds and the marijuana pipe, Officer Daugherty then advised Mr. Chrisman and Mr. Overdahl that he had seen the seeds in their room. Officer Daugherty then advised both Mr. Chrisman and Mr. Overdahl of their rights under Miranda, fully and completely. Both of them affirmatively acknowledged to Officer Daugherty that they understood their rights as granted to them under Miranda. Also, they both affirmatively indicated to Officer Daugherty that they would have no objection to talking with him and answering some questions regarding their possession of controlled substances. Identification was then taken from both individuals.

10. Officer Daugherty then asked both Mr. Chrisman and Mr. Overdahl if they had

any other controlled substances in the room. Mr. Chrisman walked over to the desk in the northeast corner and picked up the box that he had been carrying earlier. Mr. Chrisman opened the box and inside were three plastic baggies of what appeared to be marijuana and $112.00 in cash. These items were seized by Officer Daugherty.

11. Officer Daugherty then called Lt. Michael Kenny for assistance. Lt. Kenny arrived shortly thereafter. He was shown the articles seized by Officer Daugherty and advised of the events that had transpired earlier. Lt. Kenny observed that Mr. Chrisman, initially, was quite nervous. Lt. Kenny directed him to sit down and after a short time Mr. Chrisman calmed down noticeably. Lt. Kenny explained to both Mr. Chrisman and Mr. Overdahl that under the circumstances a search of their residence would be necessary. He explained

that they had an absolute right to demand that a search warrant be procured prior to any search. He explained that in order to get a search warrant he and Officer Daugherty would have to complete affidavits and go before the Judge and ask the Judge to issue a search warrant. He further explained that this process would take about two hours. He indicated that, on the other hand, they could voluntarily consent to the search. Mr. Chrisman and Mr. Overdahl were then given the opportunity to discuss whether or not they wished to consent. After a conversation between themselves, which lasted about five minutes, both Mr. Chrisman and Mr. Overdahl affirmatively indicated to Lt. Kenny that they would consent to a search of their residence. Both Mr. Chrisman and Mr. Overdahl appeared to Lt. Kenny to understand the explanations that were made them and they further appeared to be able

to make an intelligent decision regarding whether or not they wished to consent.

12. Following the obtaining of the oral consent, Cpl. Stevens of the Washington State University Police Department was called and asked to bring written consent to search forms to the room. He arrived approximately 20 minutes later. During this interim period both Mr. Chrisman and Mr. Overdahl were once again advised of their rights under Miranda which they once again affirmatively acknowledged and waived. Officer Daugherty went over the written consent to search forms with both Mr. Chrisman and Mr. Overdahl, explaining the various aspects of the form, and obtained their signatures. Once this had been accomplished, the room was searched in the presence of Mr. Chrisman and Mr. Overdahl. Various items of contraband, including marijuana, LSD, and papers tending to reflect the sales of controlled substances,

were seized.

CONCLUSIONS OF LAW

1. Officer Daugherty properly placed defendant, CARL PHILIP OVERDAHL. under arrest for Minor in Possession. Under the circumstances presented to him at the time, Officer Daugherty was entitled to, and should have, kept Mr. Overdahl in his presence and accompanied Mr. Overdahl to his room to procure identification. Officer Daugherty was validly in the room pursuant to his arrest of Mr. Overdahl.

2. The marijuana seeds and pipe were appropriately seized by Officer Daugherty, being in his "plain view".

3. The request to Defendant Chrisman for any additional controlled substances by Officer Daugherty was appropriate. The "statement" made by Mr. Chrisman, that he knew where the contraband was located and he was not possessing it by mistake, was

made after an appropriate advisement of the defendant's rights under Miranda.

4. The exigent circumstances presented to Officer Daugherty justified his seizure of the seeds and pipe without a warrant.

5. The subsequent consent to search given by the defendants was entirely voluntary and without coercion.

DATED this 17th day of April, 1978.

Philip H. Faris
Judge

[signature blocks for counsels omitted in printing]

TRIAL COURT'S MEMORANDUM OPINION
Filed April 17, 1978

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR WHITMAN COUNTY

STATE OF WASHINGTON,

Plaintiff,

v. No. C-1799

NEIL MARTIN CHRISMAN
and CARL PHILIP OVERDAHL,

Defendants.

FACTS

An officer observed Defendant Overdahl leaving Orton Hall carrying a half gallon bottle of gin. Overdahl looked under 21 years of age to the officer. The officer knew that persons under twenty-one could not legally possess liquor and also knew that possessing liquor inside dormitories was a violation of Washington State University rules. The officer stopped Overdahl, seized the alcohol and asked for identification without advising Overdahl of Miranda rights. Overdahl offered to go to his room and get his identification and return, but the officer rejected that

proposal. The two went together to Overdahl's room. Overdahl opened the door, which was slightly ajar, left it open and went inside for his identification. The officer stood in the doorway, and watched. Chrisman was in the room. The officer observed a pipe of a type known by him to be used for the smoking of marijuana and seeds which appeared to him to be marijuana seeds. He was familiar with marijuana and marijuana seeds. When Chrisman became aware of the officer he appeared to become nervous and upset. The officer then entered the room and examined the pipe and seeds closely. Both defendants were then advised of their Miranda rights. The officer asked the defendants if they had other contraband, and Chrisman picked up a plastic box which he opened and inside of which were three plastic baggies containing material which appeared to be

marijuana and $112.00 in cash. The officer seized these articles. The officer called for assistance, and a superior officer arrived shortly. The two officers discussed with the defendants the question of searching the room. The superior officer explained procedures for obtaining a search warrant, and that the defendants could waive a search warrant and voluntarily consent to a search. The explanation was complete and the defendants were made aware that they were not required to consent to a search. The defendants discussed the matter privately and ultimately agreed to consent to the search, which was conducted and which yielded up more marijuana, a quantity of LSD, and documents tying defendants to drug transactions.

ISSUES

The defendants urge that Overdahl's original actions in going to the room with

officer, without being advised of his Miranda rights, were therefore involuntary; that the officer's conduct in looking into the room and in entering the room constituted an unlawful search; that the voluntary consent to the further search was vitiated by the illegalities preceding the same; that all of the drug evidence should be suppressed.

DECISION

Evidence obtained as a result of an unreasonable search and seizure must be suppressed. Admissions made by defendants while in custody and as the result of interrogation conducted without being advised of their rights must also be suppressed.

Although some question may exist as to the propriety of requesting identification without advising Overdahl of his Miranda rights, no prejudice to Overdahl arises therefrom. The alternative would

have been his formal arrest and detention until he could be identified. His identification would have also yielded proof of his age. It is difficult to find criticism of police conduct where an officer has probable cause to make a formal arrest but instead of doing so offers the defendant an opportunity to establish his innocence by proof of age.

In any event, no wrong-doing is to be attributed to the officer in accompanying Overdahl to his room. At that point he was able to see contraband while lawfully standing in the open door and without conducting a search. He was also aware, from common sense and from the suspicious conduct of Chrisman that if he departed with the intention of obtaining a search warrant, that the contraband would rapidly disappear. This clearly constitutes exigent circumstances and justifies the entry into the

room to seize the additional contraband.

The officer's explanation of the alternatives between a voluntary consent to the further search and the obtaining of a search warrant was complete and accurate and the defendants did voluntarily consent to the further search.

Defendants' motions to suppress will be denied.

The following authorities are of interest. State v. Brown, 9 Wn. App. 937; officers looked through drapes opened by occupants for purpose of identifying who knocked. State v. Manley, 85 Wn. 2d 120; officers looked through open window with binnoculars to identify marijuana. State v. Greco, 52 Wn. 2d 265; and State v. Werth, 18 Wn. App. 530; clear and positive evidence of a voluntary consent is required. State v. Rye, 2 Wn. App. 920; State v. Neff, 10 Wn. App. 713; consent predicated upon a

threat to obtain a search warrant is not per se coerced. State v. Murray, 8 Wn. App. 944; consent obtained by persuasion is valid. State v. Zantua, 8 Wn. App. 47, confirms Terry v. Ohio and Sibron v. New York as Washington law wherein investigative stops to determine identity may be permitted. State v. Smith, 88 Wn. 2d 127, exigent circumstances. Coolidge v. New Hampshire, 403 U.S. 443; State v. Coburne, 10 Wn. App. 298; discussions of plain view doctrine; State v. Lesnick, 84 Wn. 2d 940; State v. Proctor, 12 Wn. App. 274; observations in the course of an investigation as within the plain view doctrine.

DATED this 6th day of April, 1978.

Philip H. Faris
Superior Court Judge

PORTIONS OF PETITIONER'S (STATE'S)
WASHINGTON STATE COURT OF APPEALS BRIEF

(a portion of page 18, page 19,
and a portion of page 20)

Filed December 22, 1978

No. 2949-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

NEIL MARTIN CHRISMAN, Appellant,

and

CARL PHILIP OVERDAHL, Appellant.

APPEAL FROM THE SUPERIOR COURT FOR WHITMAN COUNTY, Honorable Philip H. Faris, Judge

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4. DID THE INITIAL SEIZURE OF THE CONTRABAND BY OFFICER DAUGHERTY FALL WITHIN THE EXCEPTION TO THE WARRANT REQUIREMENT INVOLVING "EXIGENT CIRCUMSTANCES"?

The United States Supreme Court has recognized that there are circumstances under which a police officer may enter a private residence without a warrant and search. In U.S. v. Jeffers, 342 U.S. 48, 51-52 (1951), the Court recognized that exigent circumstances may allow the entry into a private residence to seize evidence without a warrant. An exigent circumstance cited by the court in Jeffers would be the need to prevent the destruction of evidence. This principle is likewise acknowledged, though not applied, in Vale v. Louisiana, 399 U.S. 30, 35 (1970).

An example of the application of the rule is found in U.S. v. Guidry, 534 F.2d 1220 (6th Cir., 1976). In Guidry, the police had a particular residence under surveillance, believing that it contained a printing press used for the manufacture of counterfeit money. The court found that

there was probable cause to believe that the press and the counterfeit money were in the residence. During the course of the observation, it became apparent to the officers that the residents of the house were aware that they were being observed. Shortly thereafter one of the agents saw someone start a fire in the carport. It reasonably appeared to the agent that the residents of the house were in the process of destroying the counterfeit money. The court held as follows, Guidry, 534 F.2d at page 1223:

> We agree with the district judge that the totality of the circumstances confronting the officers on the scene was such as to indicate that efforts to destroy evidence were in progress and would be likely to be completed absent prompt action in entering the premises under surveillance. While the agents, probably from the time (the officer) "blew his cover" or certainly by the time fifteen minutes later when agents observed the fire in the carport could have obtained a search warrant, the time required might well have allowed

for the destruction of all the counterfeit money.

Likewise U.S. v. Shima, 545 F.2d 1026 (5th Cir., 1977), supports the position cited by the court in Guidry. The court in Shima held, 545 F.2d at page 1028:

> It must be recognized at the outset that only in "a few specifically established and well delineated" situations may a dwelling be searched without a warrant, even if there is probable cause to conduct it, and the burden is upon the government to show that the exception existed . . . Among the recognized exceptions are (1) official response to an emergency, or (2) the goods ultimately seized were in the process of destruction, or (3) it was impracticable to obtain a warrant . . . Imminent destruction, removal, or concealment of property intended to be seized, or the likelihood of it taking place before a warrant can be obtained, may provide an exception.

From a review of the evidence at the suppression hearing, the court did specifically find that, in addition to the fact that the officer was within the room and saw the contraband in plain view, that there were

exigent circumstances authorizing a search without a warrant. (RP 111, lines 24-30; RP 112, lines 1-2; Finding of Fact 5, Suppression; Conclusion of Law 4, Suppression). This finding is certainly supported by Officer Daugherty's testimony. (RP 18, lines 27-30; RP 19, lines 1-7; RP 23, lines 10-15; RP 12, lines 1-14; Memorandum Opinion, page 3, line 3-7).

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PETITIONER'S (STATE'S) ANSWER TO MOTION FOR DISCRETIONARY REVIEW

(A portion of page 4)

Filed January 10, 1980

No. 2959-III

No. 2991-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

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Neverthless, the trial court quite properly ruled that there were exigent circumstances justifying the seizure of the items seen by Officer Daugherty.

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